

**FILED**

MAY - 2 2011

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**ADELL COTHORNE, on behalf of the  
United States of America,

Plaintiff,

v.

DISTRICT OF COLUMBIADefendant.

Case: 1:11-cv-00819

Assigned To : Wilkins, Robert L.

Assign. Date : 5/2/2011

Description: General Civil

**FILED UNDER SEAL****JURY TRIAL DEMANDED****JURY  
ACTION****SEALED****QUI TAM COMPLAINT**

RELATOR ADELL COTHORNE brings this qui tam action in the name of the United States of America, by and through her undersigned attorney Devanshi P. Patel, and alleges as follows:

**SUMMARY INTRODUCTION**

1. This is an action by qui tam Relator Adell Cothorne, on behalf of the United States, against Defendant District of Columbia under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* to recover damages sustained by, and penalties owed to, the United States as the result of Defendant having knowingly presented or caused to be presented to the United States false claims for the payment of funds under the No Child Left Behind Act, Pub. L. 107-110, 1215 Stat. 1425, in excess of the amounts to which Defendant was lawfully entitled, from on or about 2006 through 2010, false claims to the United States Department of Education for the payment of funds under the Race to the Top Fund authorized appropriated through American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, false statements for receipt of federal funding under the Together Everyone Achieves More awards program, and false statements to the United States

Department of Education under the Blue Ribbon Schools Program, and as more specifically detailed below.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the claims brought under the False Claims Act pursuant to 31 U.S.C. § 3730(a), and 28 U.S.C. §§ 1331 and 1345, and over all claims pursuant to the Court's general equitable jurisdiction.

3. Venue lies in this District pursuant to 31 U.S.C. §§ 3732(a), and 28 U.S.C. §§ 1391(b) and (c), because Defendant is situated within this district and because the false or fraudulent acts set out in 31 U.S.C. § 3729 occurred in this district.

### **PARTIES**

4. Relator Cothorne is employed by Defendant as Principal, Crosby S. Noyes Education Campus ("Noyes"). She resides in Gwynn Oak, Maryland.

5. Defendant is the capital of the United States and is not part of any state; instead, it is directly overseen by the federal government. Defendant is governed by a mayor and a city council; however, the United States Congress has supreme authority over it.

### **FACTS**

#### **Elementary and Secondary Education Act of 1965 and No Child Left Behind Act of 2001**

6. In the United States, education traditionally has been the responsibility of State and local governments.

7. The federal government's role in education policy largely began with Title I of the Elementary and Secondary Education Act of 1965 ("ESEA"). The ESEA was passed as a part of President Lyndon B. Johnson's "War on Poverty." It is an extensive statute that funds primary and secondary education, emphasizes equal access to education, and establishes high

standards and accountability. The ESEA aims to shorten the achievement gaps between students by providing each child with fair and equal opportunities to achieve an exceptional education.

8. With Title I of the ESEA, Congress intended to support the states in educating impoverished, underachieving students. Title I provided federal funds to local school districts with high concentrations of children from low-income families.

9. Congress later revised ESEA with the Improving America's Schools Act of 1994. With this revision, Congress shifted its focus, requiring the states to hold disadvantaged students benefiting from Title I programs to the same standards as all other students.

10. The No Child Left Behind Act of 2001 ("NCLB") is the largest federal funding program in United States history and is the most recent reauthorization of the ESEA. On January 8, 2002, President George W. Bush signed NCLB into law.

11. The primary focus of NCLB is Title I, which allocates federal funds to assist states with educating economically disadvantaged students. Title I is the most important component of NCLB because the majority of funds are committed to Title I, and Title I requires substantial state accountability for improved student learning as evidenced by statewide testing.

12. Title I funds go to 93 percent of the nation's school districts and to 56 percent of all public schools. Most Title I funds, approximately 74 percent, go to elementary schools. Funding for Title I has increased by 35 percent over fiscal years 2000 through 2007. After adjusting for inflation, funding rose from \$9.5 billion in fiscal year 2000 to \$12.8 billion in fiscal year 2007.

13. NCLB was enacted pursuant to Congress's Spending Clause power; it conditions the states' receipt of federal education funds on compliance with certain mandates. Two of the most prominent mandates require states that accept the funds to develop and implement testing

schemes, and to make those test results publicly available. The states and local schools are free to fashion their own curricula and to determine what academic content to include in their tests, but all such choices are made under the supervisory eye of the United States Department of Education.

14. NCLB embodies four key principles: stronger accountability for results, greater flexibility for school districts and schools in the use of federal funds, more choices for parents of children from disadvantaged backgrounds, and an emphasis on teaching methods that have been demonstrated to work.

15. NCLB expands previous assessment requirements and significantly increases the consequences for accountability.

16. NCLB requires all government-run schools receiving federal funding to administer a state-wide standardized test annually to all students to determine Adequate Yearly Progress (“AYP”). AYP is defined as progress toward meeting the goal of 100 percent of all children in a state to meet state proficiency standards by the end of the 2013-2014 school year. Other indicators such as attendance also may be used to track progress, but achievement is the primary goal.

17. Schools are required to track and meet AYP for identifiable subgroups, including groups defined by race/ethnicity, poverty, gender, disability, and English proficiency. States must ensure that they include at least 95 percent of the students in each category in annual assessments.

18. Federal funds will be withheld from states failing to meet progress and inclusion requirements; states must provide funding and “corrective action” to schools failing to meet AYP for two consecutive years. Schools that miss AYP for a second consecutive year are publicly

labeled as being “in need of improvement” and are required to develop a two-year improvement plan for the subject that the school is not teaching well. Students are given the option to transfer to a better school within the school district, if any exists. Schools in need of improvement must develop plans to improve. These schools must spend at least 10 percent of NCLB funds on professional development. If a school misses its AYP target for a fourth consecutive year, the school is labeled as requiring “corrective action,” which might involve actions like replacement of staff, introduction of a new curriculum, or extending the amount of time students spend in class. The fifth year of failure results in planning to restructure the entire school; the plan is implemented if the school fails to hit its AYP targets for the sixth year in a row. Common options include closing the school, turning the school into a charter school, hiring a private company to run the school, or asking the state office of education to directly run the school.

**The American Recovery and Reinvestment Act of 2009**

19. On February 13, 2009, as a direct response to the economic crisis, Congress passed the American Recovery and Reinvestment Act of 2009 at the urging of President Obama, who signed it into law four days later. The ARRA has three immediate goals: 1) create new jobs and save existing ones; 2) spur economic activity and invest in long-term growth; 3) foster unprecedented levels of accountability and transparency in government spending.

20. Among the methods employed to implement the goals of the ARRA is the appropriation of \$100 billion for education.

21. To prevent fraud and abuse, support the most effective uses of ARRA funds, and accurately measure and track results, recipients must publicly report on how funds are used. ARRA funds are subject to additional and more rigorous reporting requirements than normally applied to grant recipients.

22. ARRA provides billions of dollars to strengthen education through the State Fiscal Stabilization Fund; Title I, Part A of the ESEA; Part B of the Individuals with Disabilities Education Act (“IDEA”); Pell Grants; Federal Work-Study; and other programs. It also provides support for adults with disabilities through the Vocational Rehabilitation State Grants program and the Independent Living programs authorized under the Rehabilitation Act.

***Race to the Top Fund***

23. The \$4.35 billion Race to the Top Fund is the largest-ever federal competitive investment in school reform. It rewards states for past accomplishments, creates incentives for future improvements, and challenges states to create comprehensive strategies for addressing the four central areas of reform to drive school improvement: 1) adopting internationally benchmarked standards and assessments that prepare students for success in college and the workplace; 2) recruiting, developing, retaining, and rewarding effective teachers and principals; 3) building data systems that measure student success and inform teachers and principals of ways to improve instruction; and 4) turning around the nation’s lowest-achieving schools.

24. The Race to the Top Fund aims to help states achieve substantial gains in student achievement through the implementation of the four reform goals described above and effectively using other ARRA funds. Race to the Top Fund grant were awarded in two rounds: Fall 2009 and Spring 2010.

**The United States Department of Education**

25. The United States Department of Education is the agency of the federal government that establishes policy for, administers, and coordinates most federal assistance to education.

26. The United States Department of Education's elementary and secondary programs annually serve more than 14,000 school districts and approximately 56 million students attending approximately 97,000 schools and 28,000 private schools.

27. The United States Department of Education is dedicated to: establishing policies on federal financial aid for education, and distributing and monitoring those funds; collecting data on America's schools and disseminating research; focusing national attention on key educational issues; and prohibiting discrimination and ensuring equal access to education.

***The Blue Ribbon Schools Program***

28. The Blue Ribbon Schools Program honors public and private elementary, middle and high schools whose students achieve at very high levels or have made significant progress and helped close gaps in achievement, especially among disadvantaged and minority students. The program is part of a larger effort by the United States Department of Education to identify and disseminate knowledge about best school leadership and teaching practices.

29. Each year since 1982, the United States Department of Education has sought out schools where students attain and maintain high academic goals, including those that beat the odds. Of more than 138,000 in the United States, just over 6,000 of America's schools have received this honor over the past 28 years.

30. Blue Ribbon Schools are honored at a national awards ceremony, where each receives a plaque and flag to signify its exemplary status. Blue Ribbon Schools serve as examples for other schools throughout the nation and details of their achievements are shared on the United States Department of Education's website.

31. The Blue Ribbon Schools Award is designed to bring public attention to the best school in the United States and recognize those schools whose students thrived and excelled. Its

purpose is threefold: 1) to honor and bring public attention to American schools that achieve high academic standards or have shown significant academic improvement over five years; 2) to make available a comprehensive framework of key criteria for school effectiveness that can serve as a basis for participatory self-assessment and planning in schools; and 3) to facilitate communication and sharing of best practices within and among schools based on a common understanding of criteria related to success.

32. Public schools are nominated by the Chief State School Officers (“CSSOs”) and by officials at the United States Department of Defense Education Activity and the Bureau of Indian Education. Private schools are nominated by the Council for American Private Education (“CAPE”). The number of possible applicants from each state is based on the number of schools and K-12 students, ranging from a minimum of three schools to a maximum of 35. CAPE may nominate up to 50 private schools. The potential for all nominations is 413 schools each year.

33. A school is eligible if: it scores in the top 10 percent on its state’s assessment regardless of student background; or it achieves dramatically increased state assessment scores and 40 percent or more of its student body qualifies as low-income or disadvantaged. Disadvantaged is defined by the CSSO of each state; it must include students eligible for free or reduced-priced meals and may include students who receive Title I services, are limited English proficient, migrant, or in need of special services.

34. The Award’s effect on schools and communities is profound. The Award becomes a selling point for local realtors, and many Blue Ribbon Schools find they more easily attract business partners, financial assistance and volunteers. Principals and teachers add the Blue Ribbon Award to their resumes. If school choice is an option, student applications to Blue Ribbon Schools increase.



35. Selected stories of schools are featured and winning applications are posted on the United States Department of Education's Blue Ribbon website. Blue Ribbon Schools are frequently profiled in the Department's newsletters and journals and on the Department's Institute of Education Sciences' Doing What Works. Blue Ribbon School leaders are called upon to give presentations at state and regional meetings about the practices at their schools that have made a difference. District and state school faculty visit Blue Ribbon Schools to learn about effective leadership and instructional strategies.

**District of Columbia Public School System**

36. The District of Columbia Public School ("DCPS") system consists of 125 principals, 4,000 teachers, 2,300 classroom aides, social workers, counselors, custodians, and other support staff, and 45,000 students. A list of schools within the DCPS system is attached hereto as Exhibit A.

37. The Office of the State Superintendent of Education ("OSSE"), formerly known as the State Education Office, sets statewide policies, provides resources and support, and exercises accountability for public education in the District of Columbia.

38. OSSE is responsible for distributing federal grant funds under NCLB. OSSE is responsible for developing and administering the annual assessment test required under NCLB.

39. Defendant is required to make certain certifications under the relevant federal statutes and regulations for receipt of federal funding.

40. DCPS has had long-standing problems related to overall management, student academic performance, and the condition of school facilities.

***Together Everyone Achieves More Awards***

41. The mission of the Together Everyone Achieves More (“TEAM”) awards program is to recognize, reward, and retain high-performing educators and support staff in the DCPS system.

42. TEAM offers DCPS school staff the opportunity to receive significant monetary awards and national recognition for helping students achieve dramatic gains.

43. TEAM is a part of the Effective Practice Incentive Community (“EPIC”), a national program led by New Leaders for New Schools. This organization drives student performance by identifying schools with significant student achievement gains and rewarding their educators for sharing the effective practices that helped lead to the gains.

44. Funding for TEAM is provided by the United States Department of Education’s Teacher Incentive Fund, DCPS, and private funders.

45. TEAM follows a six-step process to determine award recipients: 1) educators are informed about the TEAM program and the EPIC Knowledge System; 2) student achievement data is analyzed to determine the award-winning schools; 3) award-winning schools are announced and financial awards are given to all staff in those schools; 4) effective leadership, management and teaching practices that contributed to the achievement gains are identified through a rigorous investigation process; 5) identified practices are documented through video and/or written case studies; and 6) effective practice case studies are shared with educators across the nation via the web-based EPIC Knowledge System and utilized by DCPS and New Leaders in the professional development of school leaders and their teams.

46. TEAM awards are substantial. In addition to yearly salary, the following bonuses are awarded: principals receive \$10,000; assistant principals receive \$9,000; classroom teachers receive \$8,000; instructional support staff receive \$4,000; and all other staff receive \$2,000.

47. Twice in three years, Rhee, then Chancellor of DCPS, rewarded Noyes's staff for raising test scores. In 2008 and in 2010, each teacher was awarded an \$8,000.00 bonus and the principal was awarded \$10,000.00.

48. Since TEAM was launched in September 2007, 10 DCPS schools have received TEAM awards; over 400 individuals have received bonuses; and over \$1.5 million has been awarded.

**Defendant's Implementation of Requirements Set Forth Under No Child Left Behind**

49. The District of Columbia's Consolidated State Accountability Workbook submitted on May 1, 2003 and revised in June 2003, August 2006, February 2008, and February 2009 details the policies and procedures relating to the educational assessment and accountability policies of the District of Columbia. It includes the development, implementation and monitoring of a comprehensive accountability system for all public schools in the District of Columbia, including those in the District's geographic local educational agencies ("LEA"), the public schools, and public charter schools. See Exhibit B.

50. Defendant and DCPS measures student achievement through student performance on the periodic and annual assessments.

51. The periodic assessment, the District of Columbia Benchmark Assessment System ("DC BAS"), allows DCPS to track student progress and achievement throughout the year for students in grades 3 through 10. The DC BAS is administered four times a year to these students.

52. Student performance on the DC BAS provides Defendant and DCPS an indication as to how well students will then perform on the District of Columbia Comprehensive Assessment System (“DC CAS”).

53. The DC CAS is administered once a year and provides tangible results as to whether students are meeting grade-level standards. DC CAS is generally administered in April of the school year.

54. The DC CAS assesses students on reading and math in grades 3 through 8 and 10, science in grades 5 and 8, biology in high school, and composition in grades 4, 7, and 10. Student achievement results from the DC CAS are used to make accountability determinations under NCLB. Thus, each year, the performance of all District of Columbia students in each school, LEA, and state is measured using the DC CAS. The results are compared against annual performance targets to determine whether the school, LEA, or state has made AYP.

55. Pursuant to NCLB, Defendant has developed and implemented measurements for determining whether its schools and LEAs are making AYP. The three indicators for AYP for DCPS are proficiency rates on reading and math, testing participation rate, attendance rate (for elementary and middle schools only) and graduation rate (for high schools only). NCLB requires annual assessments for grades 3 through 8, and one grade in high school, which in the District of Columbia is grade 10.

56. DCPS determines whether each school is an elementary school or secondary school. Elementary schools include schools with a 3rd, 4th, and/or 5th grades that do not meet the criteria for Secondary schools. Secondary schools are schools with no 3rd and/or 4th grades and a grade above the 6th grade. Under this definition, a K-7 school, K-8 school or K-12 school would be considered an Elementary school.

57. According to federal guidelines, only students who are enrolled in a school for the “full academic year” are included in that school’s AYP calculations. A ‘full academic year’ is defined as enrollment in a public school on the official (fall) enrollment date in October of each year and the first day of testing (typically in April). The official enrollment from October is compared to the enrollment in April. The comparison identifies students in the assessed grades who have not been enrolled for the full academic year in order to report their scores at the LEA level.

58. OSSE calculates the number of full academic year students who reached proficiency for the whole school and each applicable subgroup. All student scores are placed into one of four categories: “Advanced”, “Proficient”, “Basic”, and “Below Basic”. “Proficient” and “Advanced” scores count as proficient for AYP. OSSE calculates, and DCPS confirms, the total number of non-proficient students. OSSE determines, and DCPS confirms, the total number of students who took the test but whose scores do not count towards the school’s AYP because they were not enrolled at that school for the full academic year. The same process is conducted to determine the student group for AYP at the LEA level. The percent proficient for each school and all applicable subgroups in a school is calculated by taking the number of students scoring proficient or advanced, and dividing by the number of students who participated in the test.

59. The percent proficient as explained above is compared with the proficiency targets, using the appropriate elementary or secondary target. If a school meets the academic target for the whole school and all subgroups, and meets the indicators, the school has met AYP and calculations are complete. If a school or subgroup does not achieve AYP through academic targets, OSSE then determines whether the school or subgroup has achieved AYP through “Safe

Harbor”. Safe Harbor is met when the school/subgroup meets the attendance and participation indicators. In addition, the school/subgroup must have reduced the percent of students scoring non-proficient by 10 percent from the previous year.

60. There are five levels of School Improvement Status. They are: In Need of Improvement Year 1; In Need of Improvement Year 2; Corrective Action; Restructuring Year 1; and Restructuring Year 2. The first year a school fails to make AYP in any category it does not enter any school improvement status. The second year in which a school fails to make AYP in the same category it enters In Need of Improvement Year 1. Within a category, the failure does not have to be for the same reason. If failures are in a different subgroup within the category each year, the school will advance to the next improvement level. If the failures to make AYP are not in consecutive years, the school still advances to the next improvement level. In other words, if a school is in School Improvement II status and they make AYP, that school stays in School Improvement II status and does not advance to Corrective Action status. However, if the school misses AYP in the following year, it will advance to Corrective Action status. A school must make AYP for two consecutive years to get out of school improvement status. If a school is in the first year after having been consolidated, the school will not advance in improvement status for that year. If a school has fewer than 25 Full Academic Year students in a given year, it remains in its improvement level status.

**Defendant's Race to the Top Award**

61. In its 189-page application, Defendant states, “The District of Columbia boasts the nation’s most exciting, dynamic reform agenda,” citing rising test scores and a new teacher evaluation system.

62. In the second phase of the Race to the Top Fund, 10 applicants including Defendant were awarded money allocated through the ARRA. Peer reviewers rated the 10 recipients as having the highest scoring plans; however, few points separated them from the remaining applications.

63. On August 24, 2010, United States Secretary of Education Arne Duncan announced that Defendant had been awarded \$75 million under the Race to the Top Fund.

64. For fiscal year 2010 and 2011, Defendant proposed to divide the \$75 million of stimulus funds into four primary focus areas: 1) Title I Funds to Support Innovation and Yield Academic Growth (\$16.95 million); 2) Title I Required Set Asides (\$6.3 million); 3) Reforming Special Education - IDEA Stimulus Funds (\$13.1 million); and 4) State Stabilization to Preserve Jobs - Innovative approaches to Increased Equity and Resources (\$39.3 million).

**Crosby S. Noyes Education Campus**

65. Crosby S. Noyes Education Campus (“Noyes”) is located at 2725 10th Street, NE, and it serves 431 District students from preschool through the eighth grade. Noyes has a staff of 40, which includes 25 teachers, 1 social worker, 1 guidance counselor, 4 special education instructors, and 1 librarian.

66. In 2002, Principal Wayne Ryan (“Principal Ryan”) assumed leadership of Noyes, and he served in that role through 2010.

67. In 2006, as measured by the DC CAS, only 24 percent of Noyes students were deemed proficient or better in reading and only 10 percent were deemed proficient or better in math.

68. Noyes was recognized as a DCPS TEAM school for achieving more than a 20 percent increase in DC CAS reading and mathematics scores in the 2006-2007 school year. The entire staff was awarded monetary bonuses.

69. In 2008, 58 percent of Noyes's students scored "proficient" or "advanced" in math. Students showed similar results in reading.

70. Noyes's 2008 DC CAS test scores were discussed during a September 2010 meeting at which Michelle Rhee ("Rhee"), Principal Ryan, and Relator Cothorne were present. Upon information and belief, during the meeting, Rhee and Principal Ryan recounted a 2008 discussion during which Rhee bet that Principal Ryan could not raise the test scores again. Upon information and belief, during the 2008 conversation, Principal Ryan asked Rhee what he would receive if he did, to which Rhee stated that she would take out the staff to Ruth's Chris restaurant.

71. In 2009, 84 percent of Noyes students were proficient or better in reading and 63 percent in math.

72. Upon information and belief, the staff at Noyes was awarded the promised dinner at Ruth's Chris restaurant.

73. As a result of its remarkable test scores and, more specifically, the students' incredible improvement on the DC CAS, the United States Department of Education named Noyes a National Blue Ribbon School in 2009. Noyes was one of 264 public schools nationwide given the award.

74. According to the Blue Ribbon Schools Program, Noyes received the award for "dramatically improving student performance" among a student body with "at least 40% of students from disadvantaged backgrounds."



75. In 2010, 61 percent of Noyes students were deemed proficient or better in reading and 54 percent in math.

76. In July 2010, Relator Cothorne was selected by Defendant to serve as the Principal of Tyler Elementary School. At no time, however, did Relator Cothorne serve in that role. Rather, Relator Cothorne was immediately transferred to Noyes to serve as Principal. During this time, Principal Ryan was transitioning into his new role as Instructional Superintendent. Instructional Superintendents are charged with assisting principals and other school leaders perform their jobs more effectively by: ensuring that all school leaders are given the opportunity to lead effectively; model effective instructional leadership; and provide necessary support. Noyes was included among the schools that Principal Ryan would be responsible as Instructional Superintendent. See Exhibit C.

77. In September 2010, the students at Noyes took the first of four DC BAS tests known as the "P Test". The purpose of the P Test is to evaluate the student's retention of the previous year's instruction. The students at Noyes did not perform well on the 2010 P Test. Concerned about the poor test results, Relator Cothorne was told by then guidance counselor, John Edwards ("Edwards"), "Don't worry, we'll be okay."

78. Shortly after the administration of the P Test, in October 2010, DCPS conducted an internal investigation in response to allegations of cheating, the very high level of wrong to right erasures and high test score gains for various teachers.

79. Edwards facilitated the investigation at Noyes. He selected the four (4) students and three (3) teachers who would be interviewed. Although the questioning took place all day, no report, oral or written, was produced to Relator Cothorne. Moreover, Relator Cothorne was not selected for interview.

80. In November 2010, the second of four DC BAS tests, known as the “A Test”, was administered. Upon information and belief, the A Test was administered on or about November 2 through 4, 2010.

81. During the November 2010 DC BAS testing, Relator Cothorne sat in on teacher William Harcum’s (“Harcum”) class. While there, she realized that Harcum was teaching the students while DC CAS test booklets were open and in front of the students. Upon information and belief, students in Harcum’s class tested high; however, the students’ scores generally dropped the following year.

82. On Wednesday, November 3, 2010, Relator Cothorne was working late in her office. At approximately 5:55 pm, she walked into Edwards’s office and observed the following individuals with erasers and students’ test sheets in front of them: Edwards; Sean Bellamy (“Bellamy”), Middle School Coordinator for Noyes; and Nicholas Brown (“Brown”), Middle School Math Teacher. Upon seeing Relator Cothorne, Bellamy remarked, “I can’t believe a kid drew a spider on his test and I have to erase it.”

83. Astonished by what she had observed, Relator Cothorne left Noyes at 7:00 pm. At this time, she called Josh Edelman (“Edelman”), Director/Manager of School Innovation, Office of the Chief Academic Officer, DCPS, who had visited Noyes that same day. Relator Cothorne said to Edelman, “Something is not right.” She informed Edelman that a teacher had pulled her aside earlier that day and said the following: “You know they cheat on their tests.” Relator Cothorne did not inform Edelman that the teacher who made this statement is Gladys Davis (“Davis”), a kindergarten teacher at Noyes. Edelman provided Relator Cothorne his private cell phone number and asked her to call to discuss the matter.

84. Relator Cothorne contacted Edelman as instructed and informed him of what she saw; specifically, the actions of Edwards, Bellamy, and Brown and the erasers and testing sheets. Edelman responded, “Wow” and asked that she keep him apprised; however, he said nothing more and, thereafter, never spoke to Relator Cothorne regarding the matter.

85. After her telephone call with Edelman, Relator Cothorne called Hilary Darilek (“Darilek”), Director of Principal Human Capital, DCPS. The Director of Principal Human Capital is within the Office of the Deputy Chancellor for Human Capital and Community Relations. Importantly, upon information and belief, this Office directly reports to the Chancellor of DCPS, who at the relevant times was Rhee. *See* Exhibit D.

86. During the telephone call, Relator Cothorne informed Darilek of what she saw; specifically, the actions of Edwards, Bellamy, and Brown and the erasers and testing sheets. Darilek responded, “Well, Adell, this is the BAS. It’s not the CAS. Let’s just keep talking to make sure we have monitoring in your building.”

87. During the 2009 administration of the DC CAS, monitors were assigned to Noyes; however, the monitors were not permitted to enter the classrooms.

88. On or about November 11, 2010, Relator Cothorne received notices of resignation from her management team, which was put in place by Principal Ryan. The management team consisted of the following persons: Edwards; Bellamy; Kia Williams-Jones (“Williams-Jones”), instructional coach; and Delores Ennis (“Ennis”), teacher. These individuals submitted their respective notices of resignation as members of the management team.

89. On or about November 11, 2010, Edwards, Bellamy, William-Jones, and Ennis summoned Relator Cothorne for a meeting. During the meeting, Edwards, speaking on behalf of the group, stated that he was in Classroom Teacher, Danielle Dortch’s (“Dortch”) office the

week prior and a telephone call was received from the union representative. According to Edwards, the union representative said that the principal from Noyes had called concerning three teachers who had been caught erasing answers on the DC BAS test. Edwards asked, "What do you have to say about that?" He further stated, "Now we know why twelve (12) people called out last Friday. No one wants to work for you. No one trusts you." Edwards then demanded that Relator Cothorne call a meeting with the staff to address the issue.

90. On or about November 19, 2010, Principal Ryan issued a directive to Relator Cothorne asking that she attend a mandatory meeting at his office. During the meeting, Principal Ryan stated, "I heard that you don't respect the legacy that has been built at Noyes." He then stated, "You're not saying anything" to which Relator Cothorne responded, "I'm processing. Could you clarify?" Principal Ryan stated again, "I heard that you don't respect the legacy that has been built at Noyes."

91. On December 31, 2010, Principal Ryan was removed as the Instructional Superintendent of Noyes; rather, the new Instructional Superintendent for the cluster encompassing Noyes was and currently is Steven Zagami.

92. Even though he was no longer the Instructional Superintendent of Noyes, Principal Ryan had a closed door meeting with Edwards, Bellamy, Brown, Wilson-Jones, and Ennis on Noyes's campus on or about January 17, 2011.

93. In March 2011, during the administration of the fourth DC BAS tests, known as the "C Test", Relator Cothorne visited Dortch's classroom and observed Dortch teaching materials that were going to be on the test while test booklets were in front of the students.

94. While Relator Cothorne has personally observed and has firsthand knowledge of cheating at Noyes, the falsification of DC CAS test scores is systemic, and the veracity of the

testing process and DC CAS test scores has been questioned by other DCPS principals employed by Defendant.

95. Upon information and belief, Bill Kerlina ("Kerlina"), Principal, Hearst Elementary School has questioned the 2008 DC CAS scores. The Instructional Superintendent responsible for Hearst Elementary School is Amanda Alexander.

96. Upon information and belief, Tiffany Clemmons ("Clemmons"), Principal, C.W. Harris Elementary School has questioned the 2008 DC CAS scores. The Instructional Superintendent responsible for C.W. Harris Elementary School is Errick Greene.

97. Upon information and belief, Kerlina and Clemmons have individually stated to Relator Cothorne that there was cheating in their respective schools.

98. Other staff at Noyes have approached Relator Cothorne and confirmed that there has been a long history of cheating on the periodic and annual assessment tests.

99. Upon information and belief, the tests of students whose scores were on the cusp of proficiency were altered. Erasures were made to wrong answers and correct answers were penciled-in. Careful attention was paid not to increase students' scores in a manner that, by itself, would raise a red flag.

100. Caveon Consulting Services, LLC, was hired by Defendant to investigate the very high level of wrong to right erasures and high test score gains for various teachers. The investigation, however, was limited in scope. The teachers were asked what they knew about the erasure rates; however, they were not questioned as to whether cheating had taken place. See Exhibit E.

101. Upon information and belief, Caveon was not the only firm commissioned to investigate the very high level of wrong to right erasures and high test score gains for various

teachers. Upon information and belief, another firm was selected to conduct such information, and this firm determined that there was rampant cheating on the assessment tests. Upon information and belief, the report prepared by this yet unknown firm has not been released.

102. Defendant's testing company for its periodic and annual assessment tests is CTB/McGraw-Hill. The machines used by CTB/McGraw-Hill tally the erasures on testing sheets as well as the new answer penciled-in by the student. In 2007-2008, 6 out of 8 classrooms at Noyes were flagged by CTB/McGraw-Hill because of the high percentage of wrong to right answers. In school years 2008-2009 and 2009-2010, 80 percent of classrooms were flagged by CTB/McGraw-Hill. Noyes is one of 103 District of Columbia schools that had erasure rates that surpassed District of Columbia averages at least once since 2008. See Exhibit F.

103. The AYP criteria developed and administered by OSSE is not resistant to corruption. Indeed, the test scores from 2006 through 2010 do not accurately reflect student knowledge. Corruption on the part of Defendant is intentional, or Defendant was acting with deliberate ignorance or with reckless disregard for the truth.

**COUNT I – FALSE CLAIMS ACT  
PRESENTING FALSE CLAIMS FOR PAYMENT**

104. Relator Cothorne incorporates by reference Paragraphs 1 through 103 above as if fully set forth herein.

105. Relator Cothorne seeks relief against Defendant under Section 3729(a)(1) of the False Claims Act.

106. As set forth above, Defendant knowingly, or acting with deliberate ignorance or with reckless disregard for the truth, presented, or caused to be presented, to an officer, employee, or agent of the United States Government: 1) false or fraudulent claims for federal funding for education under the NCLB, ARRA, and the TEAM Awards program; and 2) such

claims were false or fraudulent because Defendant was not eligible and/or failed to properly assess whether it was eligible to receive such funding.

107. The United States Government made payments under NCLB and ARRA because of the false or fraudulent claims caused by Defendant.

108. By reason of Defendant's false or fraudulent claims, the United States Government has been damaged in a substantial amount to be determined at trial.

**COUNT II – FALSE CLAIMS ACT  
USE OF FALSE STATEMENTS**

109. Relator Cothorne incorporates by reference Paragraphs 1 through 108 above as if fully set forth herein.

110. Relator Cothorne seeks relief against Defendant under Section 3729(a)(1)(B) of the False Claims Act.

111. As set forth above, Defendant knowingly, or acting with deliberate ignorance or with reckless disregard for the truth, made, used, and caused to be made and used, false records and statements material to a false or fraudulent claim in the connection with the submission of its claims for federal educational funding under NCLB, ARRA, and the TEAM Awards program.

112. The United States Government paid such false or fraudulent claims because of the acts and conduct of Defendant.

113. By reason of Defendant's false records and statements, the United States Government has been damaged in a substantial amount to be determined at trial.

WHEREFORE, Relator Adell Cothorne requests that judgment be entered in its favor and against Defendant as follows:

1. On the First and Second claims for relief, for treble the United States Government's damages, in an amount to be determined at trial, plus a \$10,000 penalty per violation;

2. On the First and Second claims for relief, an award of all costs of this action, with interest, including the cost to the United States Government for its expenses related to this action;

3. On the First and Second claims for relief, an award of all reasonable attorneys' fees in bringing this action;

4. That in the event the United States Government proceeds with this action, Relator Adell Cothorne be awarded an amount for bringing this action of at least 15 percent but not more than 25 percent of the proceeds of the action;

5. That in the event the United States Government does not proceed with this action, Relator Adell Cothorne be awarded an amount for bringing this action of at least 25 percent but not more than 30 percent of the proceeds of the action;

6. That Relator Adell Cothorne be awarded prejudgment interest;

7. That a trial by jury be held on all issues so triable; and

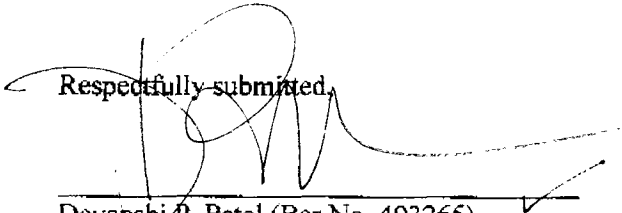
8. That Relator Adell Cothorne and the United States Government receive all relief to which either or both may be entitled at law or in equity.



I HEREBY declare and affirm under the penalties of perjury that the facts contained in the foregoing Complaint are true to the best of my knowledge, information, and belief.

  
Adell Cothorne, Relator

Respectfully submitted,

  
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